

Nand Lal. Versus State of Rajasthan
 & ors.

S.B. Criminal Revision No. 505/2005 against the order dated 19-4-2005 passed by the Additional Sessions Judge (Fast Track) No.2, Bikaner, in Sessions Case No. 19/2005.

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Date of Order: September 20, 2006

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.M. Sarswat, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. J.S. Choudhary and Mr. Pradeep Choudhary, for non-
petitioners No.2 to 5.

BY THE COURT:

This criminal revision petition under Section 397 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 19-4-2005 passed by the Additional Sessions Judge (Fast Track) No.2, Bikaner (for short, "the trial Court" hereinafter) in Sessions Case No. 19/2005, whereby the trial Court discharged the accused/non-petitioners No. 2 to 5 of the offence under Section 307 IPC; however, framed charges against them for the offences

under Sections 148, 341, 323, 325 and 149 IPC and directed to send the matter to the Chief Judicial Magistrate, Bikaner under Section 228 of the Code.

I have heard learned counsel for the petitioner, Public Prosecutor for the State and the counsel for the accused/non-petitioners No.2 to 5. Carefully gone through the order impugned, as also the police Challan papers, the statements of the witnesses recorded under Section 161 of the Code, particularly that of the injured witnesses, the injury report of injured Nand Lal (petitioner), the report of the Radiologist and the Indoor Bed Head Ticket of the Associated Group of Hospitals, Bikaner (P.B.M. Hospital, Bikaner).

It is contended by the learned counsel for the petitioner that on the basis of Parcha-Bayan of the petitioner dated 31-5-2004, the police registered the crime report and proceeded with the investigation. On conclusion of the investigation, the police filed Challan against the non-petitioners No.2 to 5 for the offences under Sections 307, 325, 323, 341, 147, 148 and 149 IPC. The trial Court discharged the accused/non-petitioners No.2 to 5 of the offence under Section 307 IPC on the ground that the accused/non-petitioners No. 2 to 5 had no intention to commit the murder and according to the learned counsel for the petitioner, this conclusion arrived at by the trial Court is based on conjecture and surmises and the same

is contrary to the evidence on record. It is further contended that the injured, in the Parcha-Bayan and the statement under Section 161 of the Code, categorically stated that the accused/non-petitioners caused numerous injuries with an intention to kill him. The other witnesses, viz. Ramdhan, Dulli Chand, Girdhari Lal, Raghu Lal and Jagdish, examined by the police under Section 161 of the Code, have also stated that the accused/non-petitioners caused the injuries to the petitioner with an intention to commit his murder.

The injury report shows that the injuries have been caused to the petitioner, on his various parts of body including the vital parts of the body like right parietal region of skull and the injuries, on being medically examined, were found to be having resulted in comminuted fractures of 1/3 of shaft both the leg bones and comminuted fractures lower 1/3 of shaft of leg bones. Injury on the right frontal region involving white matter. Tracts edema. The petitioner remained hospitalized and admitted to Associated Group of Hospitals (P.B.M. Hospital), Bikaner for several days for treatment of head injury apart from the long treatment of fractures of numerous bones as notice above. According to the learned counsel for the petitioner, the injuries on other parts of the body of the injured-petitioner resulted in damaging his both the kidneys. From the injury report, it is evident that numerous injuries have been caused to the injured-

petitioner including the injuries on lumbar and scapular regions resulting in damaging both the kidneys and, therefore, at the time of framing the charges, it was not required from the trial Court to have weighed the evidence. While recording the reasons, the trial Court has appreciated the evidence as if it is deciding the matter finally after recording the evidence, whereas at the stage of trial, what is required by the trial Court is to peruse the statements of witnesses, the averments made therein and the medical evidence on record.

It is not necessary that the injury/injuries caused should be dangerous to life; what is necessary is that from the surrounding circumstances and from the facts and circumstances of the case, if prima facie it appears that the accused caused the injuries with such intention or knowledge and under such circumstances that if by that act, death of the injured is caused, they will be guilty of murder. In the instant case, almost all the witnesses have stated that the accused/non-petitioners inflicted the injuries to the petitioner with an intent to commit his murder and that part of the evidence has not been considered by the learned trial Court. In support of his contention, learned counsel for the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court in Bappa alias Bapu Vs. The State of Maharashtra & Anr., 2005 (1) 146 (SC); Girja Shankar Vs. State of U.P., 2004 (3) Cri. Court Cases 291 (SC); and State of

Maharashtra Vs. Balram Bama Patil & ors., AIR 1983 SC 305; and the decisions of the High Courts in Akbar Vs. State & ors., RCC May, 1989 (Raj.) 232; State through Public Prosecutor Vs. Basudev Martha, 2002 (4) Crimes 488 (Bom.); Pratap Singh Vs. State of H.P., 2001 (4) Crimes 229 (H.P.).

In Girja Shankar Vs. State of U.P., JT 2004 (2) SC 140, the Hon'ble Supreme Court observed that for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. The Apex Court further held as under:-

"It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section."

In Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843, the Hon'ble Supreme Court held that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307

IPC. The same view has been reiterated by the Hon'ble Supreme Court in State of Maharashtra Vs. Balram Bama Patil & ors., (1983) 2 SCC 28, wherein the Hon'ble Apex Court held as under:-

"It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In Bappa alias Bapu Vs. State of Maharashtra, AIR 2004 SC 4119, the accused along with victim had gone to cinema to witness movie and were coming back by bicycle. Suddenly accused got down from bicycle, stabbed the victim on his stomach and back and pressed his neck. It was contended that keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC. While affirming the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

"It is sufficient to justify a conviction under Section

307 IPC if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In *Vasant Vithu Jadhav Vs. State of Maharashtra*, (2004) 9 SCC 31, the accused opened fire from a gun from a very close range at victim when he was sleeping on a cot. The shot hit the springs of the cot. The bullet broke into pieces and three such pieces struck the victim. Upholding the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

"It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature

of a simple hurt.”

In *R. Prakash Vs. State of Karnataka*, (2004) 9 SCC 27, the Hon'ble Supreme Court observed that intent coupled with some overt act in execution thereof is sufficient for constituting an offence under Section 307 IPC. The Apex Court further held as under:-

“It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

It is settled law that at the stage of framing the charge, the court need not deeply examine the probative value of the material on record. If on the basis of material on record, the court comes to the conclusion that accused have committed the offence, the court is obliged to frame the charge; as held by the Hon'ble Supreme Court in *State of Bihar Vs. Ramesh Singh*, (1977) 4 SCC 39; *Stree Atyachar Virodhi Parishad Vs. Dilip*

Nathumal Chordia & Anr., (1989) 1 SCC 715; State of Maharashtra Vs. Som Nath Thapa & Anr., (1996) 4 SCC 659; Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau, 1999 Cr.L.R. (SC) 499; and Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & ors., AIR 1980 SC 52.

In State of Orissa Vs. Debendra Nath Padhi, JT 2004 (10) SC 303, a Three Judge Bench of the Hon'ble Supreme Court held that at the time of framing the charge or taking cognizance, the accused has no right to produce any material. The Apex Court further observed that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:-

"At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

Considering the aforesaid decisions of the Hon'ble Supreme Court and keeping in view the statements of the witnesses noticed above, as also the injury report, the medical evidence, the Bed Head Ticket, in my view, prima facie there is

a ground to presume that the accused/non-petitioners No.2 to 5 caused the injuries to the injured petitioner with such intention or knowledge and under such circumstances that, if they by that act caused death, they would be guilty of murder. Therefore, in my view, the trial Court fell in error in discharging the accused/non-petitioners No.2 to 5 of the offence under Section 307 IPC and, therefore, the impugned order, to the extent of discharging the accused/non-petitioners No.2 to 5 for the offence under Section 307 IPC cannot be sustained and liable to be set aside.

In the result, the criminal revision petition is allowed; the impugned order dated 19-4-2005 passed by the trial Court in Sessions Case No. 19/2005, to the extent of discharging the accused/non-petitioners No.2 to 5, is set aside and it is directed that apart from the other offences for which the charges have been framed, the charge for the offence under Section 307 IPC be also framed against the accused/non-petitioners No.2 to 5. The stay petition also stands disposed of.

(H.R. PANWAR), J.

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